

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of the----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding)
Regarding Hawaiian Telcom, Inc.'s)
Service Quality and Performance)
Levels and Standards in Relation)
To Its Retail and Wholesale)
Customers.)
_____)

DOCKET NO. 2006-0400

ORDER NO. 22928

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed October 6, 2006

At 2 o'clock P.M.

for *Stan Carl Top*
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

for

Stan Carl Top

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ORDER

By this Order, the commission initiates an investigation to examine HAWAIIAN TELCOM, INC.'s ("Hawaiian Telcom") service quality and performance levels and standards in relation to its retail and wholesale customers. This investigation is initiated pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7, 269-15, and 269-16; Hawaii Administrative Rules ("HAR") § 6-61-71; Decision and Order No. 21696, filed on March 16, 2005, in Docket No. 04-0140 ("Decision and Order No. 21696"); and Order No. 22569, filed on June 29, 2006, in Docket No. 7702 ("Order No. 22569").

I.

Background

Hawaiian Telcom (formerly known as Verizon Hawaii Inc. ("Verizon Hawaii")) is a Hawaii corporation and a public utility, as defined by HRS § 269-1. Hawaiian Telcom is an incumbent local

exchange carrier operating in the State of Hawaii ("State") providing local and intraLATA telecommunications services on a statewide basis. It was originally chartered in 1883 under the Kingdom of Hawaii and maintains its principal offices in Honolulu, Hawaii.

By Decision and Order No. 21696, filed on March 16, 2005, in Docket No. 04-0140, the commission conditionally approved the merger transaction and other related matters described in the joint application filed by Paradise MergerSub, Inc. (now known as Hawaiian Telcom Communications, Inc. ("HT Communications")); GTE Corporation; Verizon Hawaii; Bell Atlantic Communications, Inc., dba Verizon Long Distance; and Verizon Select Services Inc. ("Merger Transaction"). Essentially, through the Merger Transaction, control over Hawaiian Telcom (then, Verizon Hawaii) and related assets were transferred from certain subsidiaries of Verizon Communications Inc. ("Verizon") to HT Communications and its parent company, which are ultimately controlled by the TC Group L.L.C., dba The Carlyle Group, a Delaware limited liability company.

While the commission ultimately approved the Merger Transaction, it imposed numerous regulatory conditions to mitigate, to the extent possible, its concerns about Hawaiian Telcom's fitness and ability to "perform the required services and whether the proposed Merger Transaction is in the public interest."¹

¹See Decision and Order No. 21696 at 25; 55-58.

In addition, recognizing that the Merger Transaction may negatively impact the quality of service being provided to the general public, the commission stated that it would initiate an investigation regarding service quality levels and standards approximately six (6) months after cutover from Verizon's systems. In that decision and order, the commission specifically indicated that the commission's service quality proceeding would:

(1) review and update the current service quality standards that are in place; (2) investigate the need to impose any new standards, requirements, and programs such as, for example, a vegetation management program; (3) determine whether and to what extent service quality levels were impacted by the effectuation of the proposed Merger Transaction; (4) consider the establishment of a mechanism or procedures to impose reasonable and appropriate penalties and fines if Hawaiian Telcom fails to meet established service quality standards; and (5) any other related issues and matters, as deemed necessary.²

Moreover, in Decision and Order No. 21696, the commission also addressed concerns raised regarding Hawaiian Telcom's performance standards and a specific request to establish Hawaii Specific Performance Standards proposed by TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"), a competitive local exchange carrier ("CLEC"), a wholesale customer of Hawaiian Telcom, and a party to the Merger Transaction docket ("Docket No. 04-0140"). The commission determined that these issues should be addressed in the commission's communications infrastructure investigation docket ("Docket No. 7702").³ Subsequently, however, on June 29, 2006,

²Id. at 46-47.

³See Decision and Order No. 21696, at 37-38.

the commission issued Order No. 22569, in Docket No. 7702, which stated that it would instead be more appropriate to address the performance standards issues raised by the Competitors⁴ in the commission's new service quality investigation referred to in Decision and Order No. 21696.

II.

Discussion

A.

Investigative Authority

HRS § 269-7 states, in relevant part:

- (a) The public utilities commission and each commissioner shall have the power to examine the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations . . .

⁴In addition to Oceanic, PACIFIC LIGHTNET, INC. ("PLNI"), also a CLEC and wholesale customer of Hawaiian Telcom, is a party to Docket No. 04-0140. Oceanic and PLNI will collectively be referred to as the "Competitors."

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- (c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.

HRS § 269-7(a) and (c) (emphasis added).

Similarly, in HRS § 269-6, the commission is vested with "general supervision . . . over all public utilities." More particularly, under HRS § 269-16, the commission is authorized to regulate the rates, fares, charges, classifications, schedules, rules, and practices of a public utility.⁵

As noted above, the commission in Decision and Order No. 21696 stated that it would initiate an investigation regarding Hawaiian Telcom's service quality levels and standards approximately six (6) months after cutover from Verizon's systems to Hawaiian Telcom's systems. Hawaiian Telcom cutover from Verizon's systems to its own operating systems on April 1, 2006. Accordingly, the commission initiates this proceeding to examine Hawaiian Telcom's service quality and performance levels and standards in relation to its retail and wholesale customers, as contemplated by Decision and Order No. 21696 and Order No. 22569.

⁵HRS § 269-16 (emphasis added). Commission investigatory authority is also set forth in HRS § 269-15 and HAR § 6-61-71.

B.

Named Parties

Given the nature of this investigation and in light of Docket Nos. 7702 and 04-0140, the commission, sua sponte, names as parties to this proceeding:

1. Hawaiian Telcom;
2. The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")⁶;
3. The UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES ("DoD/FEA");
4. Oceanic; and
5. PLNI

(collectively, the "Parties"). These Parties were or are parties to both Docket Nos. 7702 and 04-0140. Their involvement and participation in this proceeding should assist the commission in developing a sound record in examining Hawaiian Telcom's service quality and performance levels and standards in relation to its retail and wholesale customers. The commission also finds it reasonable to conclude that the Parties named above would be interested in the development of this new proceeding due to their active involvement in both past proceedings.

⁶The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to all proceedings before the commission. See HRS § 269-51 and HAR § 6-61-62.

C.

Preliminary Issues

The commission sets forth the following preliminary issues to be addressed in this proceeding:

1. To what extent has the Merger Transaction affected Hawaiian Telcom's retail and wholesale customers?
2. Are current retail service quality standards and wholesale performance standards appropriate and sufficient measures of the quality of Hawaiian Telcom's services?
3. Should any new standards, requirements, and programs (including one on vegetation management) related to retail service be developed and imposed on Hawaiian Telcom?
4. Should Hawaiian Telcom's performance standards for wholesale customers be revised? Is there a need for Hawaii specific performance standards?
5. Should there be a mechanism or procedure to impose reasonable and appropriate penalties and fines if Hawaiian Telcom fails to meet established retail service quality standards or wholesale performance standards? How should they be established? What factors should be considered? Should there be a mechanism or procedures to waive such penalties and fines and what conditions should exist for such waivers?

These are preliminary issues for consideration. During the development of the prehearing (or procedural) order for this proceeding, the Parties (and intervenors and participants, if any) shall have the opportunity to restructure these preliminary issues, stipulate to eliminate them, or recommend other issues for resolution in this proceeding for the commission's review and consideration.

D.

Procedural Matters

A motion to intervene or participate without intervention in this docket must comply with the commission's rules set forth in HAR Chapter 6-61, Subchapter 4.

If a protective order to govern the treatment of certain documents is desired, the Parties (and intervenors and participants, if any) shall file a stipulated protective order for the commission's review and approval within sixty (60) days from the date of this Order. If the Parties (and intervenors and participants, if any) are unable to stipulate, each party or participant shall file proposed protective orders for the commission's review and consideration within the sixty (60)-day filing deadline.

Within sixty (60) days from the date of this Order, the Parties (and intervenors and participants, if any) shall file a stipulated prehearing (or procedural) order to govern the matters of this investigation for the commission's review and approval. If the Parties (and intervenors and participants, if any) are

unable to stipulate, each of them shall file proposed orders for the commission's review and consideration within the sixty (60) -day filing deadline.

The commission expects all Parties (and intervenors and participants, if any) to this proceeding to participate fully in the development of the necessary procedures and issues for the orderly conduct of this investigatory proceeding, consistent with all applicable State laws and commission rules and regulations. Moreover, if necessary or appropriate, the Parties to this proceeding will be expected to actively participate in an evidentiary hearing or other procedures authorized by State law including, but not limited to, those set forth in HRS § 269-15.6.

In preparation for the initiation of this docket, the commission has held informal discussions with Hawaiian Telcom regarding retail services and Hawaiian Telcom has been providing the commission with written weekly status updates and activity reports regarding retail service measurements ("Status Reports"), which the commission finds to be beneficial as an evaluative tool of Hawaiian Telcom's retail services, and relevant to the matters of this docket. Accordingly, Hawaiian Telcom should continue to submit weekly Status Reports, which should now be filed in this docket, until further order of the commission.

In addition to the weekly Status Reports, to fulfill the purposes of this docket, the commission will take official notice of monthly service measurements reports that Hawaiian Telcom files with the commission regarding retail services and may, from time to time, take official notice of

other matters before the commission as necessary and appropriate, pursuant to HAR § 6-61-48. In addition to the ordinary manner in which the monthly service measurements reports are currently filed, those reports should also be filed in this docket on a going forward basis.

III.

Orders

THE COMMISSION ORDERS:

1. An investigative proceeding is initiated to examine Hawaiian Telcom's service quality and performance levels and standards in relation to its retail and wholesale customers, as contemplated in Decision and Order No. 21696 and Order No. 22569.

2. The commission, sua sponte, designates Hawaiian Telcom, the Consumer Advocate, the DoD/FEA, Oceanic, and PLNI as parties to this investigative docket.

3. A motion to intervene or participate without intervention must be filed not later than twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B). Motions to intervene or participate without intervention must comply with all applicable rules of HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission.

4. If a protective order to govern the treatment of certain documents is desired, the Parties (and intervenors and participants, if any) shall file a stipulated protective order for the commission's review and approval within sixty (60) days

from the date of this Order. If they are unable to stipulate, each party, (intervenor or participant, if any) shall file a proposed protective order for the commission's review and consideration within the sixty (60)-day filing deadline.

5. Within sixty (60) days from the date of this Order, the Parties (and intervenors and participants, if any) shall file a stipulated prehearing (or procedural) order to govern the matters of this investigation for the commission's review and approval. If the Parties (and intervenors and participants, if any) are unable to stipulate, each of them shall file a proposed order for the commission's review and consideration within the sixty (60)-day filing deadline.

6. Hawaiian Telcom shall file weekly Status Reports and monthly service measurements reports, as specified in this Order, regarding retail services in this proceeding, until further order of the commission. Upon the issuance of a protective order in this docket, Hawaiian Telcom shall file the Status Reports that were informally submitted to the commission prior to the issuance of this Order and any confidential portions of the weekly Status Reports filed since the opening of this docket.

DONE at Honolulu, Hawaii OCT - 6 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By: John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Ji Sook Kim
Commission Counsel

2006-0400.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22928 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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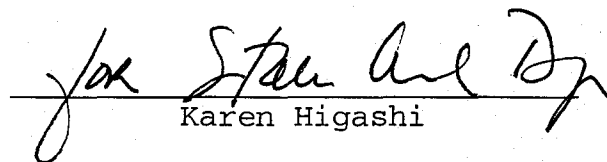
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(Certificate of Service - Continued)

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